

Voting Rights Triumph over Penmanship in Montgomery County

Md. Court of Appeals correct to reject legibility requirement

By Phil Andrews

April 1, 2011 – The Baltimore Sun

More than 270,000 Montgomery County voters were nearly disenfranchised last year by the State Board of Elections when it added a legibility requirement and rejected more than 23,000 signatures gathered by opponents of Montgomery County's ambulance fee law. If the signatures of the Founding Fathers on the Declaration of Independence had been subject to the election board's standards for penmanship, Maryland might still be a colony.

All Marylanders should thank Montgomery County's volunteer firefighters who, with pro bono assistance from the law firm of Skadden Arps, took the Board of Elections to court. Although a circuit court judge upheld the board's decision, reason finally prevailed when the Maryland Court of Appeals ordered that a referendum be held after determining that volunteer firefighters had obtained the required 33,000-plus valid signatures when those rejected solely because of illegibility were included. (Volunteer firefighters had submitted more than 52,000 signatures to the Board of Elections, the most ever for a county referendum in Maryland.) Montgomery County voters proceeded to decisively reject the ambulance fee law last November.

Although voters in Montgomery County benefited immediately from the court's decision, all of the people of Maryland won too. At stake was nothing less than the effective ability of Marylanders to exercise their right to place recently enacted laws on the ballot for a referendum. This right provides a crucial check against unwise acts by the General Assembly or by local legislative bodies. Although the right to referendum is established in Maryland's Constitution, this right can be effectively nullified by draconian signature requirements.

On March 22, the Court of Appeals issued its crucial written opinion in the case: "We hold that a signature on a petition is but one component of the voter's identity that is to be considered in the validation process, and that if the signer's entire entry is statutorily sufficient under 6-203, an illegible signature, on its own, does not preclude validation." The court decision prohibits election boards from automatically rejecting illegible signatures, as happened last year in Montgomery County. A board must consider the cumulative information provided by a petition signer.

If the Court of Appeals hadn't ruled as it did, election boards would have become rejection boards with regard to referendum petitions. Since many voters' signatures are

partially or fully illegible, it would have become all but impossible for groups other than those with almost unlimited funds to gather the tens of thousands of signatures needed to comply with the board's unduly burdensome, nonsensical and extralegal requirement that a person's signature be legible to be valid.

Some commentators (including The Sun in its March 23 editorial, "Sloppy Signatures, Sloppy Standards" have criticized the Court of Appeals' ruling as inconsistent with a 2008 ruling by the same court on another referendum petition case (*Jane Doe v. Montgomery County Board of Elections*). As the court's March 22 written opinion makes clear, however, the 2008 decision was about the requirements in Maryland law that petition signers include a signature as well as other statutorily required information. The court affirmed those requirements.

The 2010 court case centered on a different question — whether election boards can invalidate a signature solely because it is illegible. The court wisely rejected this new policy, which isn't required by law, has a disenfranchising effect, and undermines efforts to protect against fraud. If a voter had to alter his or her normal signature to conform to a legibility requirement, the perverse result would be that his or her signature might well appear fraudulent if challenged.

The ability of Marylanders to effectively exercise their right to petition recently passed laws to the ballot has been restored by the persistence of Montgomery County's volunteer firefighters and a wise decision by the Court of Appeals. Continued vigilance by the public is needed, however, since lawmakers who dislike referendums may seek to increase the very substantial number of signatures already needed to trigger them.

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